

REMARKS

Entry of the foregoing and reconsideration of the subject application are respectfully requested in light of the amendments above and the comments which follow.

Claims 1-36 were pending in this application. In this response, claims 1, 4, 9, 12 and 14 have been amended and claims 3, 11, 17-18 and 25-26 canceled. Thus, claims 1-2, 4-10, 12-16, 19-24 and 27-36 remain pending.

Support for the foregoing amendments can be found, for example, in at least the following locations in the original disclosure: the original claims.

Entry of the foregoing is appropriate pursuant to 37 C.F.R. § 1.116 for at least the following reasons. The amendments raise no new issues that would necessitate further search and/or substantive reexamination and presents claims that, in conjunction with the below remarks, are allowable.

MATTERS OF FORM

The specification is objected to because of informalities. Applicants have amended the specification to address the Examiner's concern described at paragraph 2 of the Office Action. Applicants respectfully request reconsideration the objection to the specification.

CLAIM REJECTIONS UNDER 35 U.S.C. §102

Claims 1, 3, 9 and 11 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,908,651 to Gustavsson et al. (hereafter "*Gustavsson et al.*") on the grounds set forth at paragraph 6 of the Official Action. This rejection is respectfully traversed.

Independent claim 1 recites that the liquid circulates throughout the entire filling line extending from said storage tank to said filler constantly during both liquid filling and suspension of liquid filling. Independent claim 9 recites that the liquid in a filler tank is returned through a return piping attached to the filler tank to the entire liquid filling line so that said liquid constantly circulates throughout said liquid filling line, both during liquid filling and suspension of liquid filling.

Gustavsson et al. is concerned with and addresses the problem of recovering excess product and providing it back to the filling station for placing in containers (see, col. 2, lines 13-21 and 37-39). In the *Gustavsson et al.* apparatus, overflow from the filling operation is collected by overflow tank 30. In the method in *Gustavsson et al.*, when the filling process is completed (col. 3, line 57), liquid in the overflow tank is returned to the filler tank 26 through ancillary overflow line 41 (col. 4, lines 4-11). Also, liquid in the overflow line 32 is pushed by compressed air from source 42 to the primary balance tank 12 (col. 4, lines 11-18). This is a post-processing recovery operation (col. 4, lines 8).

To anticipate a claim, the reference must teach all of the elements of the claim. See MPEP § 2131. Comparing the disclosure in *Gustavsson et al.* to claim 1 of the present application at issue here, the *Gustavsson et al.* patent does not circulate liquid throughout the entire filling line extending from said storage tank to said filler constantly during both liquid filling and suspension of liquid filling. In fact, when there is no filling operation, there is no liquid flowing in the liquid filling line in *Gustavsson et al.* In light of at least this difference, Applicants respectfully submits that an anticipatory rejection of claim 1 is improper since *Gustavsson et al.* does not disclose the invention as claimed.

Comparing the disclosure in *Gustavsson et al.* to claim 9 of the present application at issue here, the *Gustavsson et al.* patent does not return liquid in a filler tank through a return piping attached to the filler tank to the entire liquid filling line so that said liquid constantly circulates throughout said liquid filling line, both during liquid filling and suspension of liquid filling. As noted, when there is no filling operation, there is no liquid flowing in the liquid filling line in *Gustavsson et al.* In light of at least this difference, Applicants respectfully submits that an anticipatory rejection of claims 9 and 11 is improper since *Gustavsson et al.* does not disclose the invention as claimed.

Further and contrary to the Examiner's note in paragraph 5, there is no correlation between the ordinary use and operation of the apparatus in *Gustavsson et al.* and the claimed methods and operations. Thus, there is no basis for the Examiner's conclusion that *Gustavsson et al.* necessarily performs the claimed method. The above discussion on the differences between *Gustavsson et al.* and the claims has definitively shown that *Gustavsson et al.* operates completely differently from the claimed method.

Based on at least the above reasons, reconsideration and withdrawal of the rejection of claims 1 and 9 are respectfully requested.

Dependent claim 3 and dependent claim 11 have been canceled and the rejection as to these claims is moot.

Claims 1, 3, 4, 6, 7, 8, 9, 11, 12, 14, 15, 16, 18, 19, 21, 22, 24, 28 and 31 are rejected under 35 U.S.C. §102(b) as being anticipated by Japanese Patent Publication No. 2001-72189 (hereafter "*JPP*") on the grounds set forth at paragraph 2 of the Official Action. This rejection is respectfully traversed.

Each of the independent claims 1, 4, 9 and 12 states variously that the (a) liquid circulates throughout the entire filling line extending from said storage tank to said filler constantly during both liquid filling and suspension of liquid filling (claim 1); (b) the liquid from said filler tank is constantly flowing and is variably proportioned between returning through a return piping attached to said filler tank and refluxing to said storage tank through a reflux path so that the liquid circulates throughout the entire filling line extending from said storage tank to said filler (claim 4); (c) the liquid in a filler tank is returned through a return piping attached to the filler tank to the entire liquid filling line so that said liquid constantly circulates throughout said liquid filling line, both during liquid filling and suspension of liquid filling (claim 9); or (d) at least a portion of the liquid from a filler tank is constantly flowing through return piping attached to said filler tank to the entire liquid filling line so that said liquid circulates throughout the entire liquid filling line (claim 12).

JPP is arranged and operates in a completely different manner than in the claims. *JPP* discloses a recovery system that includes a system to move liquid from a cushion tank 4 through a heater 8 to a first pressure tank 12. Downstream of the first pressure tank 12 is a second pressure tank 22, which supplies liquid to a filling station in the form of wheel 24 and nozzle 26. Prior to the first pressure tank 12 is a first return path 15. This forms what *JPP* calls a 1st diversion circuit. When the level in the first pressure tank 12 past a setpoint, the 1st diversion circuit operates to return liquid to the cushion tank. In that mode of operation, liquid does not even enter the second pressure tank 22. After the second pressure tank 22 and before the filling station is a return path 32 back to the cushion tank 4. Both the 1st diversion circuit and the return path pass through a cooler 16.

JPP is concerned with and operates to supply liquid to a filler and, after a suspension time of 20 minutes, either (a) circulates upstream material through the 1st diversion circuit or (b) circulates material in the filling lines from after the 1st diversion circuit to the filling station through a return line (see paras. [0020] to [0024]). Changeover valve 30 is “switched between two positions to direct the flow (see, para. [0025]). In other words, the valve 30 operates in a binary manner, allowing flow from pipe 27 to fill nozzles 26 OR allowing reflux flow through pipe 32 to the cushion tank 4, but not both.

To anticipate a claim, the reference must teach all of the elements of the claim. See MPEP § 2131. Comparing the disclosure in *JPP* to independent claims 1, 4, 9 and 12 of the present application at issue here, the *JPP* patent does not operate and does not contemplate flowing liquid throughout the entire reflux line during both filling operations and when filling is suspended as presently claimed and does not disclose or contemplate variable proportioning of the flow as claimed. Rather, *JPP* uses changeover valve 30 is “switched between two positions to direct the flow (see, para. [0025]). In other words, the valve 30 operates in a binary manner, allowing flow from pipe 27 to fill nozzles 26 OR allowing reflux flow through pipe 32 to the cushion tank 4, but not both. Further, *JPP* expressly states that for a suspense time of 20 minutes there is no circulation at all. In light of at least these differences, Applicants respectfully submits that an anticipatory rejection of claims 1, 4, 9 and 12 is improper since *JPP* does not disclose the invention as claimed.

In addition, due to the above-described structural differences, the presently claimed apparatus can obtain particular technical effects. That is, in the disclosure in *JPP*, the second pressure tank 22 is located on the upstream side of the filler 24 including the filler tank. And the second diversion valve is located between the second pressure tank 22 and the filler 24.

Therefore, it is necessary to heat the filler 24 in order to raise the temperature thereof. Here, a heated liquid is used in order to raise the temperature of the filler 24 and the used liquid is discharged and wasted. In this regard, JPP explains the heating process for the filler 24 as follows:

In the heating mode, while advancing the guttering 52 under the filling nozzle 26, the filler 24 is rotated, the liquid valve of the filling nozzle 26 is opened only the range where the liquid valve is positioned on the guttering 52, and the liquid is discharged to the guttering 52. The range in which the guttering 52 is provided is identified by the encoder 56.

The liquid maintained between the filler 24 and the second diversion valve 30 is discharged from the filling nozzle 26 to the guttering 52. Further, the liquid maintained between the first diversion valve 14 and the second diversion valve 30 is delivered to the filler 24. And the liquid is used for heating the filler 24 and discharged from the filling nozzle 26 to the guttering 52.

See, column 5, line 48 to column 6, line 9

In contrast, in the present claims, the liquid is circulated through the filler including filler tank 4. Therefore, the temperature of the filler tank 4 is also risen by the heated liquid. To this end, the liquid used for rising the temperature of the filler is not wasted.

Further and contrary to the Examiner's note in paragraph 5, there is no correlation between the ordinary use and operation of the apparatus in *JPP* and the claimed methods and operations. Thus, there is no basis for the Examiner's conclusion that *JPP* necessarily performs the claimed method. The above discussion on the differences between *JPP* and the claims has definitively shown that *JPP* operates completely differently from the claimed method.

Based on at least the above reasons, reconsideration and withdrawal of the rejection of claims 1, 3, 4, 6, 7, 8, 9, 11, 12, 14, 15, 16, 18, 19, 21, 22, 24, 28 and 31 are respectfully requested.

CLAIM REJECTIONS UNDER 35 U.S.C. §103

Claims 2, 5, 10, 13, 17, 20, 23, 25, 26, 27, 29, 30 and 32 are rejected under 35 U.S.C. §103(a) as being unpatentable over *JPP* in view of U.S. Patent No. 4,809,595 to Catelli (hereafter "*Catelli*") on the grounds set forth on page 4 of the Official Action. This rejection is respectfully traversed.

Applicants do not dispute that beverages containing a solid component are known. However, this knowledge alone, as in *Catelli*, does not contribute to overcome the deficiency in the primary reference of *JPP* such that the differences noted above in addressing the anticipation rejection are overcome. In other words, even if combined, *JPP* in view of *Catelli* does not contain all of the features of the rejected claims here because the combination still lacks at least one feature of the present claims. For at least this reason, the rejection should be withdrawn.

Claims 33-36 are rejected under 35 U.S.C. §103(a) as being unpatentable over *JPP* in view of Japanese Unexamined Patent Publication No. Hei 6-293302 (hereafter "*JPP2*") on the grounds set forth at paragraph 8 of the Official Action. This rejection is respectfully traversed.

At paragraph [0006] of the instant application, *JPP2* is described simply as providing circulation of the beverage in the neighborhood of the filler. This portion of the application also implies that liquid in other portions of the filling line is stagnant.

There is no basis in the statement at paragraph [0006] for this rejection nor any reasoning by the Examiner to extend the disclosure at paragraph [0006] to a claim where a portion of the liquid in the filler tank is constantly refluxed to the storage tank through the reflux path as presented in each of claims 33-36. Indeed, Applicants' disclosure at paragraph [0006] says

nothing about a storage tank and the Examiner has not referenced any portion of *JPP2* for such a disclosure. Thus, in total and for at least this reason, the Examiner has not established a *prima facie* case of obviousness because the rejection as articulated is completely lacking an element of the claim. For at least this reason, reconsideration and withdrawal of the rejection of claims 33-36 are respectfully requested.

CONCLUSION

From the foregoing, further and favorable action in the form of a Notice of Allowance is earnestly solicited. Should the Examiner feel that any issues remain, it is requested that the undersigned be contacted so that any such issues may be adequately addressed and prosecution of the instant application expedited.

Respectfully submitted,

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